



ISSUE #1

MARKUP #1 ->

Section 1: [Bylaws Article III, Section 3.6 (Sale of Units - Right of First Refusal)] Board of Managers' Thirty-Day Right of

Any Unit Owner who receives a bona fide offer for the sale or lease of his or her Unit shall give written notice thereof to the Board of Managers, accompanied by an executed copy of the proposed contract. The Board of Managers, on behalf of the Association, shall have the right of first refusal to purchase or lease the Unit upon the same terms and conditions within thirty (30) days after receipt of such notice, without necessity of calling a special meeting of the Unit Owners.

MARKUP #1 · FAIR HOUSING ACT (FHA) LIABILITY RISK

BOARD & COUNSEL REVIEW

Sec. Bylaws Article III, Section 3.6 (Sale of Units - Right of First Refusal) (p. 1): Right of First Refusal (ROFR) clause lacks mandatory exemptions for foreclosure, deeds in lieu of foreclosure, and FHA/GSE-insured mortgages.

Statutory / Legal Reference: Fannie Mae Selling Guide B4-2.1-03; Freddie Mac Guide Ch. 5701; 24 C.F.R. § 203.43b (HUD/FHA)

Statutory Comparison: Under federal HUD/FHA regulations (24 C.F.R. § 203.43b) and Fannie Mae / Freddie Mac project eligibility standards, any Right of First Refusal in the governing documents renders the entire community non-warrantable for federal and conventional secondary-market mortgages unless it expressly exempts foreclosures, deeds-in-lieu of foreclosure, and mortgagee transfers, and complies with anti-discrimination mandates.

CURRENT WORDING IN DOCUMENT:

[Bylaws Article III, Section 3.6 (Sale of Units - Right of First Refusal)] Board of Managers' Thirty-Day Right of First Refusal on Unit Sales and Leases - Any Unit Owner who receives a bona fide offer for the sale or lease of his or her Unit shall give written notice thereof to the Board of Managers, accompanied by an executed copy of the proposed contract. The Board of Managers, on behalf of the Association, shall have the right of first refusal to purchase or lease the Unit upon the same terms and conditions within thirty (30) days after receipt of such notice, without necessity of calling a special meeting of the Unit Owners.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Any Right of First Refusal reserved herein shall not apply to or impair the rights of any institutional First Mortgagee, nor shall it apply to any transfer or conveyance by foreclosure, deed in lieu of foreclosure, or subsequent sale by a First Mortgagee, Fannie Mae, Freddie Mac, FHA/HUD, or VA, in compliance with 24 C.F.R. § 203.43b and Fannie Mae Selling Guide B4-2.1-03.